



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 21, 1997

Mr. John B. Dahill
Assistant District Attorney
Advisory Chief
Dallas County District Attorney
Civil Section
Administration Building
411 Elm Street
Dallas, Texas 75202

OR97-2562

Dear Mr. Dahill:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110286.

Dallas County (the "county") received a request for

- (1) any and all proposals, bids, and other documents submitted by Enershop, Johnson Controls, and TD in response to RFP No. 96-098 and the Request for Clarification issued in 1997;
- (2) any and all documents concerning the invitation for bids on the project;
- (3) any and all correspondence, communications and documents between the Dallas County Commissioners Court, the evaluation team, and Enershop, Johnson Controls, and TD (including any parent or affiliated company or person of each vendor) concerning the invitation for bids on the project;
- (4) any and all correspondence, communications and documents between the Dallas County Commissioners Court, the evaluation team, and Enershop, Johnson Controls, and TD (including any parent or affiliated company or person of each vendor) concerning each vendor's response to RFP No. 96-098 and to the Request for Clarification;

(4)[sic] any and all evaluation forms and matrix(s) prepared by the evaluation team concerning the RFP and vendor responses; and

(5) any and all documents prepared by the evaluation team in connection with their analysis of the responses to the RFP.

You state that the county is making available to the requestor all of the information which was previously made public. You submitted copies of these documents labeled Exhibits C, D, E, and F. You contend, however, that the remaining requested information is excepted from required public disclosure by sections 552.104 and 552.110 of the Government Code. We have considered your arguments and have reviewed the submitted representative sample of documents.¹

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 (1991) at 2. Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision 541 (1990) at 4. Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). However, other types of information may be withheld pursuant to section 552.104 during the competitive bidding process. *Cf.* Open Records Decision No. 170 (1977). For example, in Attorney General Opinion MW-591 (1982), this office determined that the General Land Office may withhold "the identities of those who nominate tracts to be leased by the School Land Board at mineral lease sales."

You state that the competitive bidding process has not yet been completed for the service contract at issue and that the contract has not yet been awarded. Therefore, we conclude that the department may withhold the information which you have asserted is excepted from disclosure under section 552.104. Once the competitive bidding process is completed and a contract has been awarded, you may not continue to withhold this information under section 552.104. Open Records Decision No. 541 (1990) at 5.²

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²Because we are able to make a determination under section 552.104, we do not address the applicability of section 552.110 at this time.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 110286

Enclosures: Submitted documents

cc: Ms. Janet L. Hamilton
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